

By: Callegari

H.B. No. 3057

Substitute the following for H.B. No. 3057:

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C.S.H.B. No. 3057

A BILL TO BE ENTITLED

AN ACT

relating to the acquisition of real property for public use.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 373.002(b), Local Government Code, is amended to read as follows:

(b) Activities conducted under this chapter are directed toward the following purposes:

(1) elimination of [~~slums and~~] areas affected by blight;

(2) prevention of blighting influences and of the deterioration of property and neighborhood and community facilities important to the welfare of the community;

(3) elimination of conditions detrimental to the public health, safety, and welfare;

(4) expansion and improvement of the quantity and quality of community services essential for the development of viable urban communities;

(5) more rational use of land and other natural resources;

(6) improved arrangement of residential, commercial, industrial, recreational, and other necessary activity centers;

(7) restoration and preservation of properties of special value for historic, architectural, or aesthetic reasons;

(8) reduction of the isolation of income groups in

1 communities and geographical areas, promotion of increased
2 diversity and vitality of neighborhoods through spatial
3 deconcentration of housing opportunities for persons of low and
4 moderate income, and revitalization of deteriorating or
5 deteriorated neighborhoods to attract persons of higher income; and

6 (9) alleviation of physical and economic distress
7 through the stimulation of private investment and community
8 revitalization in [~~slum or~~] blighted areas.

9 SECTION 2. Section 373.004, Local Government Code, is
10 amended to read as follows:

11 Sec. 373.004. GOALS OF PROGRAM. Through a community
12 development program, a municipality may conduct work or activities
13 designed to:

14 (1) improve the living and economic conditions of
15 persons of low and moderate income;

16 (2) benefit low or moderate income neighborhoods;

17 (3) aid in the prevention or elimination of [~~slums~~
18 ~~and~~] blighted areas;

19 (4) aid a federally assisted new community; or

20 (5) meet other urgent community development needs,
21 including an activity or function specified for a community
22 development program that incorporates a federally assisted new
23 community.

24 SECTION 3. Section 373.006, Local Government Code, is
25 amended to read as follows:

26 Sec. 373.006. REQUIRED PROCEDURES BEFORE ADOPTION OF
27 COMMUNITY DEVELOPMENT PROGRAM. Before exercising powers under

1 Section 373.005, the governing body of the municipality must:

2 (1) identify areas of the municipality in which
3 predominantly low and moderate income persons reside and each unit
4 of real property in the municipality~~[7]~~ that has the
5 characteristics of blight ~~[are blighted or slum areas]~~ or that is a
6 ~~[are]~~ federally assisted new community in the municipality
7 ~~[communities]~~;

8 (2) establish community development program areas in
9 which community development activities, building rehabilitation,
10 or the acquisition of privately owned buildings or land is
11 proposed;

12 (3) adopt, by resolution or ordinance, a plan under
13 which citizens may publicly comment on the proposed community
14 development program;

15 (4) conduct public hearings on the proposed program
16 before the 15th day before the date of its final adoption by the
17 governing body; and

18 (5) adopt the community development program by
19 resolution or ordinance.

20 SECTION 4. Sections 374.002(a) and (b), Local Government
21 Code, are amended to read as follows:

22 (a) The legislature finds that ~~[slum and]~~ blighted areas
23 exist in municipalities in this state and that those areas:

24 (1) are a serious and growing menace that is injurious
25 and inimical to the public health, safety, morals, and welfare of
26 the residents of this state;

27 (2) contribute substantially and increasingly to the

1 spread of disease and crime, requiring excessive and
2 disproportionate expenditures of public funds for the preservation
3 of the public health and safety, and for crime prevention,
4 correctional facilities, prosecution and punishment, treatment of
5 juvenile delinquency, and the maintenance of adequate police, fire,
6 and accident protection and other public services and facilities;
7 and

8 (3) constitute an economic and social liability,
9 substantially impair the sound growth of affected municipalities,
10 and retard the provision of housing accommodations.

11 (b) For these reasons, prevention and elimination of [~~slum~~
12 ~~and~~] blighted areas are matters of state policy and concern that may
13 be best addressed by the combined action of private enterprise,
14 municipal regulation, and other public action through approved
15 urban renewal plans. The legislature further finds that the repair
16 and rehabilitation of buildings and other improvements in affected
17 areas, public acquisition of real property, demolition of buildings
18 and other improvements as necessary to eliminate [~~slum or~~] blight
19 conditions or to prevent the spread of those conditions, the
20 disposition of property acquired in affected areas and incidental
21 to the purposes stated by this subsection, and other public
22 assistance to eliminate those conditions are public purposes for
23 which public money may be spent and the power of eminent domain
24 exercised.

25 SECTION 5. Sections 374.003(3), (18), (25), (26), and (28),
26 Local Government Code, are amended to read as follows:

27 (3) "Blighted area" means property [~~an area~~] that:

1 (A) presents two or more of the following
2 conditions for at least one year after the date on which notice of
3 the conditions is provided to the property owner as required by
4 Section 374.018(a)(1) or (b):

5 (i) the property contains uninhabitable,
6 unsafe, or abandoned structures;

7 (ii) the property has inadequate provisions
8 for sanitation;

9 (iii) there exists on the property an
10 imminent harm to life or other property caused by fire, flood,
11 hurricane, tornado, earthquake, storm, or other natural
12 catastrophe declared to be a disaster under Section 418.014,
13 Government Code, or certified as a disaster for federal assistance
14 under Section 418.021, Government Code;

15 (iv) the property has been identified by
16 the federal Environmental Protection Agency as a superfund site
17 under the federal Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et
19 seq.) or as environmentally contaminated to an extent that the
20 property requires remedial investigation or a feasibility study; or

21 (v) the property has been the location of
22 repeated illegal activity of which the property owner knew or
23 should have known; and

24 (B) is conducive to ill health, transmission of
25 disease, infant mortality, or crime in the immediate proximity of
26 the property ~~[is not a slum area, but that, because of deteriorating~~
27 ~~buildings, structures, or other improvements, defective or~~

1 ~~inadequate streets, street layout, or accessibility, unsanitary~~
2 ~~conditions, or other hazardous conditions, adversely affects the~~
3 ~~public health, safety, morals, or welfare of the municipality and~~
4 ~~its residents, substantially retards the provision of a sound and~~
5 ~~healthful housing environment, or results in an economic or social~~
6 ~~liability to the municipality. The term includes an area certified~~
7 ~~as a disaster area as provided by Section 374.903].~~

8 (18) "Rehabilitation" means the restoration of
9 buildings or other structures to prevent deterioration of an area
10 that is tending to become a blighted area ~~[or a slum area]~~.

11 (25) "Urban renewal activities" includes ~~[slum~~
12 ~~clearance,~~] redevelopment, rehabilitation, and conservation
13 activities to prevent further deterioration of an area that is
14 tending to become a blighted ~~[or slum]~~ area. The term includes:

15 (A) the acquisition of all or part of a ~~[slum area~~
16 ~~or]~~ blighted area or the acquisition of land that is predominantly
17 open and that, because of obsolete platting, diversity of
18 ownership, deterioration of structures or site improvements, or for
19 other reasons, substantially impairs or arrests the sound growth of
20 the community;

21 (B) the demolition and removal of buildings and
22 improvements;

23 (C) the installation, construction, or
24 reconstruction of streets, utilities, parks, playgrounds, and
25 other improvements necessary to fulfill urban renewal objectives in
26 accordance with an urban renewal plan;

27 (D) the disposition by the municipality of

1 property acquired in an urban renewal area for use in accordance
2 with an urban renewal plan, including the sale or initial lease of
3 the property at its fair value or the retention of the property;

4 (E) the implementation of plans for a program of
5 voluntary repair and rehabilitation of buildings or improvements in
6 accordance with an urban renewal plan; and

7 (F) the acquisition of real property in an urban
8 renewal area as necessary to remove or prevent the spread of blight
9 or deterioration or to provide land for needed public facilities.

10 (26) "Urban renewal area" means a [~~slum area,~~
11 blighted area~~], or a combination of those areas~~] that the governing
12 body of a municipality designates as appropriate for an urban
13 renewal project.

14 (28) "Urban renewal project" includes any of the
15 following activities undertaken in accordance with an urban renewal
16 plan:

17 (A) municipal activities in an urban renewal area
18 that are designed to eliminate or to prevent the development or
19 spread of [~~slums and~~] blighted areas;

20 (B) [~~slum clearance and redevelopment in an urban~~
21 ~~renewal area,~~

22 [~~(C)~~] rehabilitation or conservation in an urban
23 renewal area;

24 (C) [~~(D)~~] development of open land that, because
25 of location or situation, is necessary for sound community growth
26 and that is to be developed, by replatting and planning, for
27 predominantly residential uses; or

1 (D) [~~(E)~~] any combination or part of the
2 activities described by Paragraphs (A)-(C) [~~(D)~~].

3 SECTION 6. Section 374.011, Local Government Code, is
4 amended by amending Subsection (a) and adding Subsection (d) to
5 read as follows:

6 (a) Except as provided by Section 374.012, a municipality
7 may not exercise a power granted under this chapter unless:

8 (1) the governing body of the municipality adopts a
9 resolution that finds that a [~~slum area or~~] blighted area exists in
10 the municipality and that the rehabilitation, the conservation, or
11 the [~~slum clearance and~~] redevelopment of the area is necessary for
12 the public health, safety, morals, or welfare of the residents of
13 the municipality; and

14 (2) a majority of the municipality's voters voting in
15 an election held as provided by Subsection (b) favor adoption of the
16 resolution.

17 (d) The governing body of the municipality must determine
18 that each unit of real property included in a resolution under
19 Subsection (a) has the characteristics of blight.

20 SECTION 7. Section 374.012(c), Local Government Code, is
21 amended to read as follows:

22 (c) The resolution ordering the election and the notice of
23 the election must contain:

24 (1) a complete legal description of each unit of
25 property [~~the area~~] included in the proposed project;

26 (2) a statement of the nature of the proposed project;
27 [~~and~~]

1 (3) a statement of the total amount of local funds to
2 be spent on the proposed project; and

3 (4) a statement that each unit of property has the
4 characteristics of blight.

5 SECTION 8. Section 374.013(a), Local Government Code, is
6 amended to read as follows:

7 (a) To further the urban renewal objectives of this chapter,
8 a municipality may formulate a workable program to use appropriate
9 private and public resources, including the resources specified by
10 Subsection (b), to encourage urban rehabilitation, to provide for
11 the redevelopment of [~~slum and~~] blighted areas, or to undertake
12 those activities or other feasible municipal activities as may be
13 suitably employed to achieve the objective of the program. The
14 program must specifically include provisions relating to:

15 (1) prevention, through diligent enforcement of
16 housing and occupancy controls and standards, of the expansion of
17 blight into areas of the municipality that are free from blight; and

18 (2) rehabilitation or conservation of [~~slum and~~]
19 blighted areas as far as practicable to areas that are free from
20 blight through replanning, removing congestion, providing parks,
21 playgrounds, and other public improvements, encouraging voluntary
22 rehabilitation and requiring the repair and rehabilitation of
23 deteriorated or deteriorating structures[, ~~and the clearance and~~
24 ~~redevelopment of slum areas~~].

25 SECTION 9. Section 374.014(a), Local Government Code, is
26 amended to read as follows:

27 (a) A municipality may not prepare an urban renewal plan for

1 an area unless the governing body of the municipality has, by
2 resolution, declared the area to be a [~~slum area, a~~] blighted area[~~, or both,~~]
3 and has designated the area as appropriate for an urban
4 renewal project. The governing body may not approve an urban
5 renewal plan until a general plan has been prepared for the
6 municipality. A municipality may not acquire real property for an
7 urban renewal project until the governing body has approved the
8 urban renewal plan as provided by Subsection (d).

9 SECTION 10. Sections 374.015(a) and (d), Local Government
10 Code, are amended to read as follows:

11 (a) A municipality may exercise all powers necessary or
12 convenient to carry out the purposes of this chapter, including the
13 power to:

14 (1) conduct preliminary surveys to determine if
15 undertaking an urban renewal project is feasible;

16 (2) conduct urban renewal projects within its area of
17 operation;

18 (3) execute contracts and other instruments necessary
19 or convenient to the exercise of its powers under this chapter;

20 (4) provide, arrange, or contract for the furnishing
21 or repair by any person of services, privileges, works, streets,
22 roads, public utilities, or other facilities in connection with an
23 urban renewal project, including installation, construction, and
24 reconstruction of streets, utilities, parks, playgrounds, and
25 other public improvements necessary to carry out an urban renewal
26 project;

27 (5) acquire any real property, including

1 improvements, and any personal property necessary for
2 administrative purposes, that is necessary or incidental to an
3 urban renewal project, hold, improve, clear, or prepare the
4 property for redevelopment, mortgage or otherwise encumber or
5 dispose of the real property, insure or provide for the insurance of
6 real or personal property or municipal operations against any risk
7 or hazard and to pay premiums on that insurance, and enter any
8 necessary contracts;

9 (6) invest urban renewal project funds held in
10 reserves or sinking funds, or not required for immediate
11 disbursement, in property or securities in which banks may legally
12 invest funds subject to their control, redeem bonds issued under
13 Section 374.026 at the redemption price established in the bond, or
14 purchase those bonds at less than the redemption price, and cancel
15 the bonds redeemed or purchased;

16 (7) borrow money and apply for and accept advances,
17 loans, grants, contributions, and other forms of financial
18 assistance from the federal, state, or county government, other
19 public body, or other public or private sources for the purposes of
20 this chapter, give any required security, and make and carry out any
21 contracts in connection with the financial assistance;

22 (8) make plans necessary to carry out this chapter in
23 its area of operation, contract with any person in making and
24 carrying out the plans, and adopt, approve, modify or amend the
25 plans;

26 (9) develop, test, and report methods and techniques
27 for the prevention of [~~slums~~ and] urban blight, conduct

1 demonstrations and other activities in connection with those
2 methods and techniques, and apply for, accept, and use federal
3 grants made for those purposes;

4 (10) prepare plans and provide reasonable assistance
5 for the relocation of persons displaced from an urban renewal
6 project area, including families, business concerns, and others, as
7 necessary to acquire possession and to clear the area in order to
8 conduct the urban renewal project;

9 (11) appropriate funds and make expenditures as
10 necessary to implement this chapter and, subject to Subsection (c),
11 levy taxes and assessments for that purpose;

12 (12) close, vacate, plan, or replan streets, roads,
13 sidewalks, ways, or other places, plan, replan, zone, or rezone any
14 part of the municipality and make exceptions from building
15 regulations, and enter agreements with an urban renewal agency
16 vested with urban renewal powers under Subchapter C, which may
17 extend over any period, restricting action to be taken by the
18 municipality under any of the powers granted under this chapter;

19 (13) organize, coordinate, and direct the
20 administration of this chapter within the area of operation as
21 those provisions apply to the municipality to most effectively
22 promote and achieve the purposes of this chapter and establish new
23 municipal offices or reorganize existing offices as necessary to
24 most effectively implement those purposes; and

25 (14) issue tax increment bonds.

26 (d) A [~~Except as provided by Section 374.016, a~~]
27 municipality may acquire by condemnation any interest in real

1 property, including a fee simple interest, that the municipality
2 considers necessary for or in connection with an urban renewal
3 project. Property dedicated to a public use may be acquired in that
4 manner, except that property belonging to the state or to a
5 political subdivision of the state may not be acquired without the
6 consent of the state or political subdivision.

7 SECTION 11. Section 374.017(d), Local Government Code, is
8 amended to read as follows:

9 (d) Real property or an interest in real property subject to
10 this section may only be sold, leased, or otherwise transferred or
11 retained at not less than the fair value of the property for uses in
12 accordance with the urban renewal plan. In determining the fair
13 value, the municipality shall consider:

- 14 (1) the uses provided in the urban renewal plan;
- 15 (2) any restrictions on and any covenants, conditions,
16 and obligations assumed by the purchaser, lessee, or municipality
17 in retaining the property;
- 18 (3) the objectives of the plan for the prevention of
19 the recurrence of [~~slums or~~] blighted areas; and
- 20 (4) any other matters that the municipality specifies
21 as appropriate.

22 SECTION 12. Section 374.021(b), Local Government Code, is
23 amended to read as follows:

24 (b) In this section, "urban renewal project powers"
25 includes the rights, powers, functions, and duties of a
26 municipality under this chapter. The term does not include the
27 power to:

(1) determine an area as a [~~slum area~~,] blighted area[, ~~or both~~] and to designate that area as appropriate for an urban renewal project;

(2) approve and amend urban renewal plans and hold public hearings relating to those plans;

(3) establish a general plan for the locality as a whole;

(4) establish a workable program under Section 374.013;

(5) make determinations and findings under Section 374.011(a), 374.013(b), or 374.014(d);

(6) issue general obligation bonds; and

(7) appropriate funds, levy taxes and assessments, and exercise other functions under Subdivisions (11) and (12) of Section 374.015(a).

SECTION 13. Subchapter B, Chapter 374, Local Government Code, is amended by adding Sections 374.018 and 374.019 to read as follows:

Sec. 374.018. LIMITATIONS ON CHARACTERIZATIONS OF BLIGHT.

(a) Notwithstanding any other law, an area may not be considered a blighted area on the basis of a condition described by Section 374.003 unless:

(1) the municipality has given notice in writing to the property owner by first class mail regarding the condition to the:

(A) last known address of the property owner; and

(B) physical address of the property; and

1 (2) the property owner fails to take reasonable
2 measures to remedy the condition.

3 (b) If a mailing address for the property owner cannot be
4 determined, the municipality shall post notice in writing regarding
5 the condition in a conspicuous place on the property.

6 (c) An area may not be considered a blighted area solely for
7 an aesthetic reason.

8 (d) A determination by a municipality that a unit of real
9 property has the characteristics of blight is valid for two years.

10 (e) After the two-year period prescribed by Subsection (d),
11 a municipality may make a new determination that the unit of real
12 property has the characteristics of blight and redesignate the unit
13 of real property as a blighted area for another two-year period.

14 (f) A municipality may remove a determination of blight
15 under this chapter if the municipality finds that the property
16 owner has remedied the condition that was the basis for the
17 determination.

18 Sec. 374.019. COMMON OWNER PROPERTY. For the purposes of
19 this chapter and Chapter 21, Property Code, if a municipality
20 determines that two or more contiguous units of real property that
21 are owned by the same person have the characteristics of blight, the
22 municipality may treat those units of property as one unit of
23 property.

24 SECTION 14. Section 2206.001(b), Government Code, is
25 amended to read as follows:

26 (b) A governmental or private entity may not take private
27 property through the use of eminent domain if the taking:

1 (1) confers a private benefit on a particular private
2 party through the use of the property;

3 (2) is for a public use that is merely a pretext to
4 confer a private benefit on a particular private party; or

5 (3) is for economic development purposes, unless the
6 economic development results [~~is a secondary purpose resulting~~]
7 from municipal community development or municipal urban renewal
8 activities to eliminate an existing affirmative harm on society
9 from [~~slum or~~] blighted areas under:

10 (A) Chapter 373 or 374, Local Government Code,
11 other than an activity described by Section 373.002(b)(5), Local
12 Government Code; or

13 (B) Section 311.005(a)(1)(I), Tax Code.

14 SECTION 15. The following provisions of the Local
15 Government Code are repealed:

16 (1) Section 374.003(19); and

17 (2) Section 374.016.

18 SECTION 16. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2007.